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8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Statement of Issues
11 Against:

Case No. 4048

12 **DARQUIS K. FISHER**
13 **40 Navy Rd.**
San Francisco, CA 94124

STATEMENT OF ISSUES

14 Respondent.

15
16 Complainant alleges:

17 **PARTIES**

18 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
19 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

20 2. On or about October 1, 2010, the Board of Pharmacy (Board), Department of
21 Consumer Affairs received an application for a Pharmacy Technician Registration from Darquis
22 K. Fisher (Respondent). On or about September 10, 2010, Darquis K. Fisher certified under
23 penalty of perjury to the truthfulness of all statements, answers, and representations in the
24 application. The Board denied the application on February 17, 2011.

25 **JURISDICTION**

26 3. This Statement of Issues is brought before the Board under the authority of the
27 following laws. All section references are to the Business and Professions Code unless otherwise
28 indicated.

4. Section 4300 of the Code states:

11
• • • •

"(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy, including, but not limited to, the following:

"(1) Medical or psychiatric evaluation.

"(2) Continuing medical or psychiatric treatment.

"(3) Restriction of type or circumstances of practice.

"(4) Continuing participation in a board-approved rehabilitation program.

"(5) Abstention from the use of alcohol or drugs.

"(6) Random fluid testing for alcohol or drugs.

"(7) Compliance with laws and regulations governing the practice of pharmacy.

.. ..

"(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure."

JURISDICTION

5. Section 480 of the Business and Professions Code provides, in pertinent part, that a board may deny a license if the applicant has been convicted of a crime substantially related to the qualifications, functions or duties of the business or profession for which application is made, has committed any act involving dishonesty, fraud or deceit, has committed any act which if done by a licensee would be grounds for suspension or revocation of a license, or has knowingly made a false statement of fact required to be revealed in the application.

6. Section 4301 of the Code states:

1 "The board shall take action against any holder of a license who is guilty of unprofessional
2 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
3 Unprofessional conduct shall include, but is not limited to, any of the following:

4 ". . . .

5 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
6 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
7 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
8 to the extent that the use impairs the ability of the person to conduct with safety to the public the
9 practice authorized by the license.

10 ". . . .

11 "(k) The conviction of more than one misdemeanor or any felony involving the use,
12 consumption, or self-administration of any dangerous drug or alcoholic beverage, or any
13 combination of those substances.

14 "(l) The conviction of a crime substantially related to the qualifications, functions, and
15 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
16 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
17 substances or of a violation of the statutes of this state regulating controlled substances or
18 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
19 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
20 The board may inquire into the circumstances surrounding the commission of the crime, in order
21 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
22 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
23 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
24 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
25 of this provision. The board may take action when the time for appeal has elapsed, or the
26 judgment of conviction has been affirmed on appeal or when an order granting probation is made
27 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
28 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not

1 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
2 indictment.

3"

4 7. California Code of Regulations, title 16, section 1770, states:

5 "For the purpose of denial, suspension, or revocation of a personal or facility license
6 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
7 crime or act shall be considered substantially related to the qualifications, functions or duties of a
8 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
9 licensee or registrant to perform the functions authorized by his license or registration in a manner
10 consistent with the public health, safety, or welfare."

11 **FIRST CAUSE FOR DENIAL OF APPLICATION**

12 (Criminal Convictions)

13 8. Respondent's application is subject to denial pursuant to Code sections 480, 4300(c),
14 and 4301(k) & (l), as refined by title 17, section 1770, California Code of Regulations, in that
15 Respondent received a criminal conviction. Specifically, on or around December 10, 2008, in the
16 Superior Court of California, County of Alameda, Respondent pled no contest to and was
17 convicted of violating California Vehicle Code 23153(b) (Driving with .08% Blood Alcohol
18 Causing Injury), a felony. The circumstances were that Respondent drove while intoxicated and
19 collided with another vehicle.

20 **SECOND CAUSE FOR DENIAL OF APPLICATION**

21 (Dangerous Use of Alcohol)

22 9. Respondent's application is subject to denial pursuant to Code sections 4300(c) and
23 4301(h) in that Respondent administered to himself alcoholic beverages to the extent or in a
24 manner dangerous or injurious to himself, to any other person, or to the public, or to the extent
25 that the use impaired his ability to conduct with safety to the public the practice authorized by the
26 license. The circumstances are described above in the First Cause for Denial of Application.

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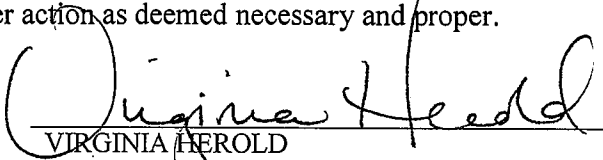
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Denying the application of Darquis K. Fisher for a Pharmacy Technician Registration;
2. Taking such other and further action as deemed necessary and proper.

DATED: 8/16/11


VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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